

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SHAWN DRUMGOLD,
Plaintiff

V.

TIMOTHY CALLAHAN, FRANCIS
M. ROACHE, PAUL MURPHY,
RICHARD WALSH, and
THE CITY OF BOSTON,
Defendants

04-CV-11193-NG

**ANSWER OF DEFENDANT FRANCIS M. ROACHE TO PLAINTIFF'S
COMPLAINT**

1. This paragraph is introductory in nature and does not require an answer from Francis M. Roache (hereinafter “the Defendant” or “Roache”). To the extent that an answer is required, the Defendant denies the allegations contained therein.

JURISDICTION

2. This paragraph sets forth a legal conclusion for which no answer is required. To the extent that an answer is required, Roache denies the allegations contained therein.

PARTIES

3. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 and calls upon the Plaintiff to prove the same.

4. Defendant admits the allegations contained in Paragraph 4 as they pertain to Francis M. Roache.

5. Defendant admits the allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

7. Defendant admits the allegations contained in Paragraph 7.

8. Defendant admits the allegations contained in Paragraph 8 as they pertain to the individual defendants except Paul Murphy, who, upon information and belief, is deceased.

FACTS

9. Defendant admits the allegations contained in the first half of the sentence of Paragraph 9. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 9 and calls upon Plaintiff to prove the same.

10. Defendant admits the allegations contained in Paragraph 10.

11. Defendant admits the allegations contained in Paragraph 11.

12. Defendant admits the allegations contained in Paragraph 12.

13. Defendant admits the allegations contained in Paragraph 13.

14. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 14(a) through (k) and calls on Plaintiff to prove the same.

15. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 15 and calls on Plaintiff to prove the same.

16. Defendant denies the allegations contained in Paragraph 16.

17. Defendant denies the allegations contained in Paragraph 17.

18. Defendant denies the allegations contained in Paragraph 18.

COUNT I: VIOLATION OF 42 U.S.C. §1983 BY DEFENDANTS ROACHE, CALLAHAN, MURPHY AND WALSH

19. Defendant hereby repeats, re-alleges and incorporates herein his answers to Paragraphs 1-18.

20. Defendant denies the allegation contained in Paragraph 20.

COUNT II: VIOLATION OF 42 U.S.C. 1983-CONSPIRACY BY DEFENDANTS CALLAHAN, MURPHY AND WALSH

21. Defendant hereby repeats, re-alleges and incorporates herein his answers to Paragraphs 1-20 of Plaintiff's complaint.

22. Defendant neither admits nor denies the allegations contained in Paragraph 22 as same are not directed to him.

23. Defendant neither admits nor denies the allegations contained in Paragraph 23 as same are not directed to him.

**COUNT III: VIOLATION OF 42 U.S.C. 1983 BY DEFEENDANT CITY OF
BOSTON**

24. Defendant hereby repeats, re-alleges and incorporates herein his answers to Paragraphs 1-23

25. Defendant neither admits nor denies the allegations contained in Paragraph 25 as same are not directed to him.

26. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

27. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

28. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

29. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

30. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

31. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

32. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

32a-g. Defendant neither admits nor denies the allegations contained in Paragraph 26 as same are not directed to him.

33. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 and calls on Plaintiff to prove the same.

COUNT IV: VIOLATION OF M.G.L. c. 12§11I

34. Defendant hereby repeats, re-alleges and incorporates herein his answers to Paragraphs 1-33 of Plaintiff's complaint, including sub-parts.

35. Defendant denies the allegations contained in Paragraph 35.

WHEREFORE, Defendant denies that the Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Defendant answering states that the injury or damage alleged in Plaintiff's Complaint was neither caused nor proximately caused by the Defendant.

SECOND AFFIRMATIVE DEFENSE

The Defendant answering states that the injuries and damages alleged were caused by a person or entity over whom the Defendant has no responsibility or control.

THIRD AFFIRMATIVE DEFENSE

The Defendant answering states that the Plaintiff's Complaint fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

The Defendant answering states that the Plaintiff has not been deprived of any rights secured by either the Constitution or the laws of the United States or the Commonwealth of Massachusetts.

FIFTH AFFIRMATIVE DEFENSE

The Defendant answering states that at all times relevant hereto, he acted in accordance with all relevant laws of the United States and the Commonwealth of Massachusetts.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the Defendant Roache states that he is entitled to qualified immunity.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to commence this action within the applicable statute of limitations and thus his claims are barred.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, Defendant states that the plaintiff is collaterally estopped from bringing this action.

WHEREFORE, the Defendant Francis M. Roache demands judgment that the Plaintiff's Complaint be dismissed and that he recover his costs and reasonable attorneys fees.

DEMAND FOR A JURY TRIAL

Defendant, Francis M. Roache, hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
Francis M. Roache,
By his attorneys,

//s// John P. Roache
John P. Roache BBO#421680
Patrick J. Donnelly BBO#651113
Hogan, Roache & Malone
66 Long Wharf
Boston, Massachusetts 02110
(617) 367-0330

Dated: January 13, 2005